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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO LEYVA,

Defendant and Appellant.

F077301

(Super. Ct. No. 1230193)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Stanislaus County. Nancy Ashley, Judge.

S. Lynne Klein, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

## FACTS AND PROCEEDINGS

On July 10, 2007, a criminal complaint was filed charging appellant, Adolfo Leyva, with first degree murder (Pen. Code, § 187, subd. (a), count 1).<sup>1</sup> Count 1 also alleged a special circumstance that the murder was committed during an attempted carjacking (§§ 664 & 190.2, subd. (a)(17)) and an enhancement for being armed with a gun (§ 12022, subds. (a)(1) & (a)(2)). The complaint further alleged attempted carjacking (§§ 664 & 190.2, subd. (a)(17); count 2), attempted murder (§§ 664 & 187, subd. (a); count 3), and assault with a firearm (§ 245, subd. (a)(2); count 4). Counts 2 and 3 alleged an enhancement for being armed with a firearm as alleged in count 1.<sup>2</sup> Leyva pled not guilty on July 10, 2007. His original counsel declared a conflict and new counsel, Michael Platt, was substituted in to represent Leyva during a hearing on July 24, 2007. Beginning with this hearing, the case was continued numerous times over the ensuing ten years with Leyva entering time waivers through September 2017. Although Leyva's counsel Platt was relieved as private counsel on July 10, 2013, he continued to represent Leyva.<sup>3</sup>

On September 21, 2017, Leyva and his codefendant Andrew Briseno entered into a plea agreement with the People.<sup>4</sup> The court recited the following terms of Leyva's plea

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<sup>1</sup> Unless otherwise designated, all statutory references are to the Penal Code.

<sup>2</sup> An information with the same allegations was filed on January 25, 2012. Leyva waived a preliminary hearing, entered a time waiver, and pled not guilty to the information.

<sup>3</sup> At hearings on October 30, 2017, to receive victim impact testimony and on January 30, 2018, to determine Leyva's post sentencing custody credits, different attorneys appeared to represent Leyva on Platt's behalf. It is unclear whether Platt was thereafter representing Leyva as an indigent. Platt continued to represent Leyva through the September 21, 2017 change of plea hearing.

<sup>4</sup> There is an opposition to a suppression motion filed by the People on August 10, 2010. The motion refers to a confession and appears to be in response to a motion filed by another defendant, Steve Salgado III, with Leyva's name handwritten on the People's

agreement. On count 1, he would plead to the lesser included offense of voluntary manslaughter with an upper term state prison sentence of 11 years and he would waive all custody credits up to the time of his change of plea. The remaining allegations were to be dismissed. Leyva told the court he was willing to accept this plea bargain. The court explained the consequences of admitting the allegation, including not possessing firearms, submitting a DNA sample, a restitution fine between \$300 and \$10,000, an indicated restitution fine of \$3,300, and other fees. Leyva said he understood these consequences as well as the fact that the offense constituted a serious and violent felony under the three strikes law. The court informed Leyva of the deportation consequences of accepting the plea bargain.

The court informed Leyva that because he was admitting a violent felony, conduct credits in prison were limited to fifteen percent and he would have to serve eighty-five percent of his sentence. The court established that Leyva was entering his change of plea freely, knowingly, and not under threat. The court advised Leyva of his rights pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122. Leyva expressly acknowledged he understood these rights and was waiving them.

As a factual basis for the plea, the prosecutor stated that on May 1, 2007, Leyva entered into an agreement with several others to commit a carjacking. Leyva agreed to drive the suspects and in fact drove them to a location in Stanislaus County knowing several of the suspects were armed with firearms. Leyva was not personally armed with a firearm. Leyva drove around in the vehicle to surveil the victim, who was sitting in the vehicle Leyva and his compatriots intended to carjack. Leyva stopped. The other suspects exited the vehicle and approached the victim to complete the carjacking. During contact with the victim, Erik P., suspect Gary Spray fired his gun and killed him. Leyva

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reply to the motion. There is no record of the disposition of the defense motion. There is no record as to whether the motion was heard or withdrawn.

and the other suspects, including codefendant Briseno, fled. Leyva's counsel added, and the prosecutor concurred, that Erik P. was also armed with a firearm.

Leyva pled no contest to voluntary manslaughter, agreed to a sentence of 11 years, and waived his accrued custody credits. Leyva also waived his right to appeal. The court sentenced Leyva to state prison for 11 years. Leyva was ordered to pay a restitution fine of \$3,300 and granted 151 days of total custody credits for the time he spent in local custody after entering his no contest plea.

Leyva filed his notice of appeal on April 3, 2018 without seeking a certificate of probable cause. Appellate counsel has filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

### **APPELLATE COURT REVIEW**

Leyva's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Leyva was advised he could file his own brief with this court. By letter on August 10, 2018, we invited Leyva to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

### **DISPOSITION**

The judgment is affirmed.